

REMARKS

Reconsideration and withdrawal of the requirement for election of species is respectfully requested in view of the remarks herewith, which place the application in condition for allowance.

The Office Action identifies generic claims 1-12 and 44-55, and requires an election of a single disclosed species for search purposes. Applicants elect, with traverse, for further prosecution, BRSV, recited in claims 18-21 and 60-63; and, it is understood that the Examiner can broaden the search to include other species, e.g., upon determining that a species is allowable, or as discussed herein, when there is a relationship among the species and/or number of species is not too great.

It is respectfully requested that the requirement for species election be reconsidered and withdrawn and, in this regard, the Examiner is respectfully requested to review M.P.E.P. § 808.01(a) which states that "where there is no disclosure of relationship between species (*see* M.P.E.P. §806.04 (b)), they are independent inventions and election of one invention" is required (July 1998). In view of M.P.E.P. § 803, however, when the generic claim includes sufficiently few species that a search and examination of all the species at one time would not impose a serious burden on the examiner, then a requirement for election is inappropriate. The species of BRSV, BHV-1, BVDV, bPI-3, PRV, PRRSV and SIV are not too great in number; they can be searched without serious burden. At the very least, the group of bovine pathogens could be searched and examined together. Therefore, the request for species election should be reconsidered and withdrawn, or regrouped, e.g., so that all bovine pathogens are searched and examined together in this application.

It is also respectfully urged that restricting the claims in the manner suggested in the election of species requirement constitutes an undue burden to the Applicants. If followed, the election of species requirement would require Applicants to file a number of additional applications. The cost of prosecuting and maintaining additional patents is unreasonable in view of the fact that the application as filed includes claims that are all related to one another. Further, under GATT, the period of exclusivity for any patents that issue from these divisional applications is greatly reduced. In addition, the public is inconvenienced, as it will not know whether or not Applicants will file divisional applications to the remaining subject matter.

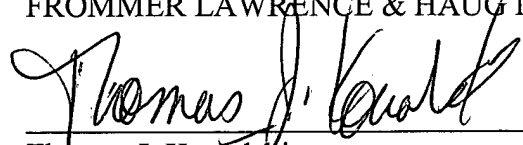
Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

CONCLUSION

Accordingly, in view of the foregoing, reconsideration and withdrawal of requirement for election of species or at least a regrouping, e.g., with all bovine pathogens being searched and examined together in this application is respectfully requested, and an early action on the merits is also earnestly solicited.

Respectfully submitted,
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